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Review of the efficiency of the administrative and financial functioning of the United Nations

Human resources management

Administration of justice in the United Nations

Report of the Advisory Committee on Administrative and Budgetary Questions

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Joint Inspection Unit (JIU) entitled "Administration of Justice at the United Nations", which was transmitted by the Secretary-General to the General Assembly in document A/55/57, as well as the comments thereon of the Secretary-General (A/55/57/Add.1). During its consideration, the Committee exchanged views with the Inspectors through video-conferencing and met with representatives of the Secretary-General, who provided additional information and clarification.

2. The Committee notes that the Secretary-General also addresses the issue of administration of justice in paragraphs 51 to 55 and annex V of his report on human resources management reform (A/55/253), which includes a description of the current situation and elaborates on suggestions proposed for further discussion. The Secretary-General indicates that the current comprehensive system, because of its highly formalized nature, leads to protracted and lengthy procedures which are neither in the interest of justice nor of the staff or management. In paragraph 52 of document A/55/253, he states:

> "The goal is to improve the effectiveness of the system by streamlining the process to ensure expeditious treatment of cases, strengthening the informal mechanisms to ensure resolution of grievances at an earlier stage, providing training, including lessons learned, to all those who are key players in the system and providing legal backstopping to provide advice to staff members and guidance to the Panel of Counsel".

3. As indicated in paragraphs 7, 13 and 17 below, the Secretary-General agrees with some of the recommendations made in the report of the Joint Inspection Unit. **The Committee is of the view that the question of administration of justice should be considered in the context of the Secretary-General's overall human resources management reform.**

Recommendation 1

4. Recommendation 1 of the Joint Inspection Unit (A/55/57) proposes the creation of an office for the settlement of disputes and the administration of justice, which would report to the Executive Office of the Secretary-General. The Committee notes that the Secretary-General indicates that the purpose of the recommendation, i.e., to increase the independence of the system of administration of justice and enhance the image and credibility of the units involved, may not be

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achieved (see A/55/57/Add.1, paras. 8 and 9). The Secretary-General questions the desirability and appropriateness of placing the secretariat of the Administrative Tribunal in the same office as the joint staff-management bodies, whose decisions are appealed to the Tribunal, arguing that such a move needs to be further clarified in order to see how these changes would improve the existing system without compromising the independence of the Administrative Tribunal.

5. **The Advisory Committee agrees with the Joint Inspection Unit on the need for the secretariat of the Tribunal to be independent**. However, the recommendation of the Joint Inspection Unit does not really solve the problem. On the basis of testimony during its hearings, the Committee could not ascertain that the arrangement now in place has produced any evidence of interference yet it is aware that the potential for it does exist. **In view of the importance attached to the independence of the secretariat of the Tribunal, the Committee is of the opinion that the Secretary-General, taking into account the views of the Administrative Tribunal, should revisit this issue (see para. 6 below)**.

6. In this connection, the Committee has requested the comments and observations of the Administrative Tribunal of the United Nations with regard to the report of the Joint Inspection Unit (A/55/57) the comments of the Secretary-General thereon (A/55/57/Add.1), and paragraphs 51-55 and annex V of the Secretary-General's report on human resources management reform (A/55/253). These comments and observations will be transmitted to the Fifth Committee.

Recommendation 2

7. The Committee notes that the Secretary-General, in his report on human resources management (A/55/253), also proposes to establish an ombudsman mechanism which would replace the panels on discrimination and other grievances, as an effective means of strengthening the informal mediation process, as has been done in other funds and programmes of the United Nations, such as the United Nations Development Programme (UNDP) and United Nations Children's Fund (UNICEF). **The Advisory Committee welcomes these developments**.

Recommendation 3

8. The Secretary-General, in paragraph 15 of document A/55/57/Add.1, argues that acceptance of JIU recommendation 3 (a), to allow the Tribunal to order specific performance of an obligation and to decide the amount of compensation to be paid, would seriously restrict his authority as chief administrative officer of the Organization. In this connection, the Committee notes the information provided in paragraph 14 on the statutes of the International Labour Organization (ILO) and the United Nations administrative tribunals.

9. The Committee points out that article 9 of the statute of the United Nations Administrative Tribunal provides that compensation awarded by the Tribunal "shall not exceed the equivalent of two years' net base salary of the applicant. The Tribunal, may, however, in exceptional cases, when it considers it justified, order the payment of a higher indemnity. A statement for the reasons for the Tribunal's decision shall accompany each such order". The Secretary-General then decides if he prefers to comply with the order for rescission or performance or to pay the amount indicated by the Tribunal. The statute of the ILO does not contain any such limitations.

10. The Advisory Committee is of the opinion that the inability of the Administrative Tribunal to order specific performance seriously limits the staff's right to redress. Although this gap has existed since the inception of the Tribunal, the Committee believes that the time has come to consider closing it, especially when a number of other far-reaching reforms in the area of human resources management are being considered. In this connection, the Committee recalls its comments on the need for an efficiently functioning system for the administration of justice as a key element of reform (see A/55/499).

11. As regards recommendation 3 (c), the addition of a post of Deputy Secretary to the Tribunal, the Committee recalls that, in the context of the proposed programme budget for 2000-2001, an additional P-3 post was approved for the Tribunal, taking into account the workload of the Tribunal. Current staffing resources therefore include one P-5, one P-3 and one General Service post. **The Committee recommends that the Secretary-General make such staffing proposals as he considers necessary to the General**

Assembly, in the context of the proposed programme budget for 2002-2003, on the basis of updated supporting workload indicators and information on such backlog as may exist.

12. The Advisory Committee requested additional information regarding the number of cases filed and judgements rendered by the Administrative Tribunal during the last six years. The information provided is contained in annex I to the present report.

Recommendation 4

13. Recommendation 4 (b) recommends offering basic legal courses to new members of the Joint Appeals Board and the Committee for Professional Responsibility, with special reference to the terms of appointment of United Nations staff, the administrative policies and practices of the Organization and the jurisprudence of the Administrative Tribunal. In this regard, the Advisory Committee notes that the Secretary-General, in paragraph 5 of annex V to document A/55/253, is proposing to provide such training to members of the Joint Appeals Board, the Joint Disciplinary Committee and the Panel of Counsel. Moreover, the Secretary-General proposes targeted training, including lessons learned, at all levels of the Secretariat, in order to disseminate information regarding recourse procedures and administrative policies and practices, as well as briefing managers, personnel officers, executive officers and administrative personnel on the outcome of appeals cases and United Nations Administrative Tribunal judgements. **The Advisory Committee welcomes this proposal**.

Recommendation 5

14. In connection with the Inspectors' recommendation to give further consideration to reviving the advisory function of the International Court of Justice in the internal recourse procedure and, in the meantime, encouraging closer working relationships between both Administrative Tribunals at the United Nations and the ILO with a view to rationalizing their competence and harmonizing their jurisprudence, the Committee notes the comments of the Secretary-General in paragraph 27 of his report (A/55/57/Add.1).

15. The Advisory Committee has serious doubts regarding the appropriateness of involving the International Court of Justice in staff disputes. In this connection, the Committee recalls that the General Assembly, in its resolution 50/54, deleted article 11 of the statute of the Administrative Tribunal of the United Nations, thus, inter alia, abolishing the Committee on Applications for Review of Administrative Tribunal Judgements.

Recommendation 6

16. The Inspectors propose to strengthen the Office of the Coordinator of Counsel in order to enhance the availability of legal advice and representation for the staff by appointing a Coordinator with strong legal qualifications at the Senior Professional level. In addition, it recommends giving an option to staff members to be represented by staff members who have separated from the Organization through resignation or other ways in addition to current practice, which includes only current and retired staff members.

17. As to the level and operational requirements of the post, the Secretary-General indicates in paragraph 28 of document A/55/57/Add.1 that these functions have been reviewed in the light of many considerations. **The Advisory Committee reiterates its observation, made in paragraph 11 above, as to presenting any such requirements in the context of the proposed programme budget for 2002-2003, on the basis of updated supporting workload indicators**. The Secretary-General, however, does indicate in paragraph 28 of document A/55/57/Add.1 that he finds the recommendation as to the provision of legal backstopping to the Panel of Counsel appropriate. Moreover, specific proposals are made in paragraph 6 of annex V to document A/55/253, such as making available, for an initial one-year period, a legal officer who would advise staff on the merits of their case and how to proceed, advise staff who are the subject of disciplinary proceedings and provide guidance to the members of the Panel. The Secretary-General also proposes to allow legal officers from the Office of Legal Affairs, not dealing with personnel matters and having no conflict of interest, to volunteer as members of the Panel.

Additional information

18. During the course of its hearings, the Committee requested additional information on a number of areas. The replies received are contained in annex II to the present report. However, the Committee notes that the

information contained in Annex II, sect. C.1, is incomplete in that it does not include amounts. Similarly, in annex II, sect. D, information is lacking on the specific number of cases. That information should be provided to the Fifth Committee.

Annex I

Administrative Tribunal cases filed and judgements rendered, 1994-1999

Year	*Number of cases filed*	*Number of cases considered*	*Number of judgements rendered*	*Number of cases joined*	*Number of cases withdrawn*	*Number of cases left*
1994	64	N/A	54	11 (3 judgements)	2	99
1995	75	N/A	58	28 (7 judgements)	4	91
1996	66	86	61	6 (6 judgements)	4	72
1997	47	71	60	7 (2 judgements)	-	54
1998	62	60	45	6 (3 judgements)	1	67
1999	72[a]	39	32	3 (1 judgement)	5	100

[a] Two cases (Nos. 1005 and 1015) each involved three applicants, who were dealt with separately in the judgement; one case (No. 1032) involved five applicants, who were also dealt with separately.

Annex II

Administrative Tribunal cases: additional information

A. Number of appeals and suspension of action cases filed and disposed of by all JABs,[a] 1995-2000

Year	New York JAB appeals filed	New York JAB cases disposed	Geneva JAB appeals filed	Geneva JAB cases disposed	Vienna JAB appeals filed	Vienna JAB cases disposed	Nairobi JAB appeals filed disposed
2000[b]	44	51	18	26	5	1	[c]
1999	64	46	28	29	4	3	[c]
1998	56	46	28	28	11	4	[c]
1997	75	54	24	20	5	2	[c]
1996	77	47	18	23	6	5	[c]
1995	70	9	21	32	3	[c]	[c]

[a] Disciplinary cases are also handled by the JAB secretariats and they are considered on a priority basis.
[b] As of 30 September 2000.
[c] Data not received.

B. Administrative Tribunal judgements emanating from appeals in which unanimous JAB recommendations[a] were either not accepted or partially accepted by the Secretary-General, 1996-1998

Year	Total number of Administrative Tribunal judgements	Number of judgements in which there was divergence between unanimous JAB recommendations Secretary-General's decision
1996	42	11 (26.0%)
1997	42	7 (16.6%)
1998	26[b]	5 (19.2%)

[a] It should be noted that unanimous JAB recommendations can be either favourable to the appellant or unfavourable. For example, in one case that had resulted from disciplinary proceedings (judgement No. 802), the Secretary-General did not accept the disciplinary measure of summary dismissal that had been recommended by JDC. He instead decided to separate the staff member with pay in lieu of notice. In that case, the Tribunal considered that JDC had not considered all the elements of the case and awarded compensation equal to six months net base salary. The Tribunal took no issue with the findings that the staff member's conduct was incompatible with further service.
[b] Two additional judgements (Nos. 881 and 883) were submitted directly to the Tribunal without prior consideration by JAB.

Other considerations/facts

- The Tribunal has only very rarely awarded compensation or other remedies as recommended by JAB, as follows:
  - 1996, three cases (judgement Nos. 764, 766 and 795);
  - 1997, no case;
  - 1998, one case (judgement No. 876).
- The Tribunal has awarded additional compensation in the following cases in which the Secretary-General had accepted in full the JAB recommendation for compensation and/or other remedy:
  - 1996, judgement Nos. 760, 767, 787 and 793;
  - 1997, judgement Nos. 838 and 842;
  - 1998, judgement Nos. 873, 882, 897, 909 and 910.
- The Tribunal has adjudicated and awarded compensation in the following cases that JAB had considered to be without merit or time-barred, as follows:
  - 1996, judgement Nos. 758, 762, 772, 779 and 791;
  - 1997, judgement Nos. 826, 835, 839, 848, 858 and 863;
  - 1998, judgement Nos. 875, 885 and 904 (time-barred).
- The Tribunal awarded compensation in the following cases in which none had been recommended by JAB:
  - 1996, judgement Nos. 784 and 793;
  - 1997, judgement No. 833;
  - 1998, judgement No. 870.

C. Payments

1. Settlement payments made since 1996

No uniform procedure exists that is followed by all organizational entities for the settlement of grievances. Generally, the United Nations, UNDP, UNICEF and UNHCR do not initiate settlement discussions involving the payment of monies except insofar as such payments are in order to rectify administrative errors, primarily in the area of monetary entitlements. Thus, when upon administrative review the Administration considers that an allowance was not paid in error or a mistaken amount was paid, the payment subsequently made in rectification of the error is not considered a settlement in the proper sense of the word. Notably, very few settlements involve the payment of monies. In this regard, all organizations always seek mutually satisfactory solutions to grievances, whenever possible, in accordance with applicable rules and regulations and in the best interest of the Organization.

2. Payments made in implementation of Administrative Tribunal Judgements, 1996-1998

Judgement No.	*Compensation ordered by the Tribunal* (United States dollars)	*Amount paid* (United States dollars)
	1996	
755: Chen	1 year nbs	[a]
758: Balkenhol-De Vries	15 000	15 000
760: Zouari	3 000	3 000
762: Smith (UNICEF)	1 000	1 000
764: Simatos (UNICEF)	1 000	1 000
765: Anderson-Bieler	10 000	10 000
767: Nawabi	2 years nbs	85 259.28
770: Sidibeh (UNHCR)	1 year nbs	52 151
772: Zeid	5 000	5 000
774: Stepczynski	SPA for 2 years and $35 000	SPA for 2 years and $35 000
779: Maia-Sampaio	5 000	5 000
782: Zoubrev	15 months nbs	46 008.15
784: Knowles	10 000	10 000
787: Abramov	6 months nbs	[a]
791: Karmoul	5 000	5 000
792: Rivola (ITC)	3 months nbs	[a]
793: Bloch	20 000	20 000
795: El-Sharkawi	6 months nbs	14 547.66
802: Baccouche	6 months nbs	[a]
805: El Aoufi (UNFPA)	15 000	15 000
	1997	
812: Everett (UNDP)	3 000	3 000
813: Emblad (UNHCR)	12 months nbs	34 349
814: Monteleone-Gilfillian	9 months nbs	37 228.95
815: Calin	6 months nbs	12 183.96
826: Beliayeva	9 months nbs	29 774.34
833: Tlatli	1 year nbs	24 448
835: Dia (UNHCR)	1 year nbs	12 705
838: Cruz Cousillas	4 months nbs	[a]
839: Noyen	6 months nbs	34 462
840: Mucino (UNDP)	6 months nbs	[a]
841: Guest & Slatford	1 year nbs and $4 000 for each appellant	42 961.59 (Guest) 44 155.48 (Slatford)
847: Wyss (UNHCR)	3 months nbs	18 220
842: Merani (UNEP)	3 months nbs	[a]

Judgement No.	*Compensation ordered by the Tribunal* (United States dollars)	*Amount paid* (United States dollars)
844: Sikka (ITC)	1 000	1 000
848: Khan	4 months nbs	19 404.32
857: Daly & Opperman	The difference in salary and entitlements between 2 grades	66 845.97 (Daly) 42 764.59 (Opperman)
858: Mr. M.	6 months nbs	35 615.64
862: Szekielda	4 months nbs	23 616
863: Palermo (UNDP UNHCR)	1 year nbs	UNHCR paid $20 850; no data from UNDP
	1998	
870: Choudhury et al. (UNMOGIP)	3 months nbs to each of the appellants	[a]
872: Hjelmquist	3 years nbs	112 491
873: Patel	$4 225 minus $500	3 725
875: Thacker	7 months nbs	21 325.43
876: Tinkl (UNITAR)	An amount corresponding to one and a half days of accrued annual leave	296.27
879: Karmel (UNICEF)	9 months nbs or compensation equal to 15 months nbs	32 985
880: Macmillan-Nihlen	3 000	3 000
881: Zeghouani	6% interest on the repatriation grant	[a]
882: Ossolo (UNDP)	1 year nbs, in addition to 3 months nbs	[a]
883: Cellerier et al.	Salary supplement that they would have received in May and June 1995, as well as 1 additional month of salary supplement	[a]
885: Handelsman	3 months nbs	16 231.56
892: Sitnikova	3 000	3 000
897: Jhuthi (Habitat)	2 months nbs	[a]
899: Randall	6 months nbs minus $500 already paid	34 544.44
900: Salma	3 months nbs in addition to $500 already paid	16 112.14
904: Noyen	3 000	3 000
907: Salvia (ECLAC)	18 months nbs and 3 months nbs for the delays	[a]
909: Sims	3 months nbs	14 493
910: Soares (UNDP)	3 months nbs	[a]

Note: nbs = net base salary.

[a] Data not received.

D. Cases which resulted in compensation because of negligence of managers and action taken vis-à-vis the managers

Only in a very few cases are damage awards related to individual errors, and it is for those cases that the Secretary-General has proposed the implementation of procedures to ensure accountability (see A/54/793).

As indicated in the above-mentioned report, the proposed procedures will ensure that the due process rights of staff members will be protected in respect of the implementation of Staff Rule 112.3 (Financial responsibility). Such procedures will determine whether there was "gross negligence" in a specific instance, and what financial responsibility, if any, should be incurred by those who committed gross negligence. These procedures include changes to the composition and mandate of the Joint Disciplinary Committee (JDC), thereby enabling JDC to consider cases of staff charged with gross negligence and to make recommendations for recovery under Staff Rule 112.3. These new procedures necessitate corresponding changes to the Staff Rules pertaining to the functions and composition of JDC.

However, since JIU has also made particular proposals concerning the mandate of JDC, which proposals are currently before the Advisory Committee, it is important that account be taken of the Committee's and the Assembly's action concerning the name and mandate of JDC, in response to JIU proposals, prior to proceeding with the changes to the Staff Rules and the preparation of the relevant administrative instruction. Notably, since the new Staff Rules and implementing administrative instruction will clearly affect the conditions of work, they will have to be submitted to staff consultations.

It is worthwhile to note that the Tribunal has made reference to Staff Rule 112.3 and invited the Secretary-General to consider the applicability of that Rule and recovery in two cases that it adjudicated during 1999: judgement Nos. 914 (Gordon and Pelanne) and 936 (Salama). In both cases, the officials that the Tribunal identified as bearing primary responsibility for the injury sustained by the appellants have retired from or have left the service of the Organization, and therefore the issue of recovery does not arise.